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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,174	01/25/2002	Robert E. Briggs	000295.00014	9144

22907 7590 06/17/2004

BANNER & WITCOFF
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SUITE 1100
WASHINGTON, DC 20001

EXAMINER

GRASER, JENNIFER E

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/055,174

Applicant(s)

BRIGGS ET AL.

Examiner

Jennifer E. Graser

Art Unit

1645

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 22 March 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

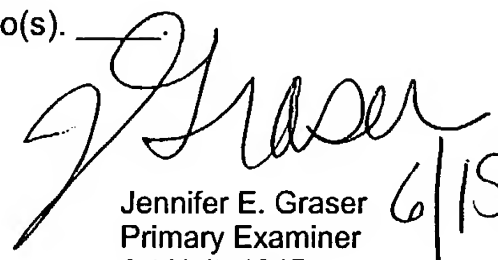
Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 37-41 and 66-95.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


Jennifer E. Graser
Primary Examiner
Art Unit: 1645
6/19/04

ADVISORY ACTION

1. The proposed reply filed on 5/24/04 has not been entered because the new limitations in claims 81, 91, 95 and new claims 102-104 raise many new 112, second paragraph issues and would require further search and consideration. The wording of claims 81, 91 and 95 is particularly confusing. The claims recite a "second source" but does not make it clear what the second source can be. Further, the use of the term "source" makes it unclear if it is the isolated mutant leukotoxin derived from these sources which is being administered or if it is the "source" itself, i.e., the *purified protein, a bacterial lysate, a bacterial extract, and a culture supernatant*, which is being administered. The use of the term "form" is also confusing in the way it is presented in the claims. Additionally, the phrase "no biologically active leukotoxin" in the claims implies no biological activity yet the leukotoxin is able to stimulate an immune response to neutralize the wild-type leukotoxin which is a biological activity. This is also confusing.

Suggestions were made in the previous Advisory Action; however, not all of the suggestions were adapted. Further, there are additional problems with the current claims as stated above. The application is in After Final status so only limitations which do not require further search, consideration and do not raise new matter are allowed at this time. A new examination and rejections will not be made. Applicants may wish to file an RCE in order to make the proposed changes to the claims.

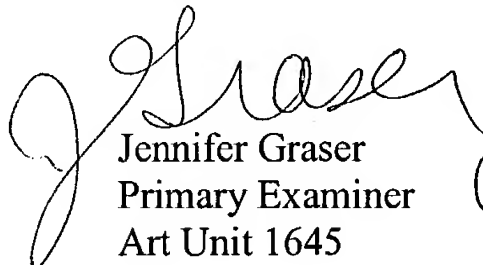
2. Correspondence regarding this application should be directed to Group Art Unit 1645. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Remsen. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 1645 Fax number is (703) 872-9306 which is able to receive transmissions 24 hours/day, 7 days/week.

Art Unit: 1645

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Graser whose telephone number is (571) 272-0858. The examiner can normally be reached on Monday-Friday from 7:00 AM-4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-0500.


Jennifer Graser
Primary Examiner
Art Unit 1645

6/15/09